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A Model County Court

MORE persons have business with local courts of limited jurisdiction than with nisi prius and appellate tribunals. A considerable share of all the people never see the inside of a court of general jurisdiction except as jurors or spectators and in the life of the average citizen such occasions are rare. Allowing for the fact that one-fourth of the total population of the country is found in metropolitan districts we still have left a large majority of the people dependent upon the courts of narrow scope sitting in ordinary rural and semi-rural counties.

It is not necessary to show that these lesser and more intimate courts exert a greater influence than the more dignified tribunals by way of apology for a study of their needs. They are at least very essential. While they lie almost outside the interests of the legal profession they nevertheless involve technical features which have made political scientists shy of entering the field and this may explain the present lack of constructive proposals.

It is only another instance of "everybody's business" being slighted. Inefficiency in courts possessing narrow jurisdiction does not sting any individual very hard at any one time. It does not stir those who are strong enough to react powerfully because the privilege of appeal affords immediate relief of a sort. The people generally have only a vague ideal of efficient judicial administration and no conception of better administrative machinery. There is no complete analysis of the shortcomings of local courts and only scant reference thereto is permissible in this article. While the ordinary condition of minor courts throughout the country has not provoked a whirlwind of complaint, we must agree that it resulted long ago in general pessimism and frequently expressed contempt on the part of bar and laity alike.

The sum total of harm to the political and social fabric must

be very great. We are not yet in a fair way to estimate this harm because we have as yet no clear understanding of the affirmative value to be secured through genuine social efficiency in the people's local courts.

There is no need for treating the subject from the standpoint of any particular state. Throughout the country conditions are so nearly uniform that we can conceive of a generally prevailing form and plan a general structure to succeed it. This precludes reference to constitutional limitations. In the first stage it is desirable to ignore such limitations. Only after an ideal is established is it in order to consider whether it is preferable to alter any given constitution or to modify the scheme to avoid this difficulty.

It is plausible to hold that proposed change should endeavor to preserve as much as possible of deep-rooted form and alter externals only where this appears necessary. For instance, it is possible to propose that the office of justice of the peace be abolished outright. But it is more politic to propose only such changes in the office, if local magistrates are found consistent with the scheme, as are needed to obviate existing defects. On the other hand it may appear advantageous to find a new name for the reformed office to avoid misunderstanding and to free the new plan from existing prejudice.

Recent discussions of the administration of justice indicate that we are coming to place more emphasis on "administration". There is a growing sense that a great deal depends upon the machinery of administration and that until we shall have adapted judicial organization to modern conditions it is unfair to condemn the quality of the product or the personnel of the judiciary.

Our organization of minor tribunals reflects the needs experienced during its formative stage. In most states the environment has undergone great change while the organization is but little altered from the unrelated and rigid system suited to pioneer conditions. A far greater population must be served in the typical county than in early days. Railroad service, trolley lines, better roads, the automobile, the telephone, and rural mail delivery all contribute to make the system archaic.

Territorial distribution of population is the first factor in administration. The county, next to the state, is the significant political unit. The problem is best considered as one of unifying the limited judicial power adaptable to the average county's

needs and of providing an efficiency organization for the judges and ministerial officers to the end that controversies involving small sums may be adjudicated at a minimum of social friction and cost to litigants and to the public.

The model county court system may be secured as part of the fully developed state court system. In its entirety it is inseparable from the ideal of a co-ordinated state court system. But the growing interest in county government affords excuse for considering the local courts separately. There seems to be no reason why any single county in California could not attempt a solution of the problem with prospect of great profit.

This article will deal with the question first as a local one and having worked out a scheme from local needs will consider its relation to the ideal unified state court system.

The county court organization may well begin with the presumption that there should be in every county one judge responsible for the administration of justice in the local courts. Let him be called the county judge. His jurisdiction, if he is really to be responsible for the administration of justice within his county, must be inclusive as to subject matter. There seems to be no reason why it should not include equitable remedies. It should certainly not leave for commissioners or other magistrates such special proceedings as suits between landlord and tenant. All of the administrative work of the probate court should be included and this may be accomplished by making the county judge register in probate, or assistant to the court of general jurisdiction to which probate causes are assigned. This division would rest on the principle that uncontested probate matters are best cared for by a local judge while contested matters deserve as much experience and training as important chancery causes.

It is desired to fix the limit of county court jurisdiction at such a point that one judge will be kept reasonably busy in the county of average population. Accepting the foregoing broad view as to subject matter it appears practical to make this limit $500 alike in contract, tort, and chancery matters, but to permit of waiver of this limit by mutual agreement. In criminal causes the county court should have exclusive jurisdiction of misdemeanors and should have concurrent jurisdiction, with the consent of the accused, of all but the most important causes. If a single judge could handle all the business thus specified in a county having not more than 40,000 population there would be compara-

tively few counties in which additional judges would be required.

The reason for having local courts of limited jurisdiction arises from the fact that a cause involving only a small amount cannot stand the cost of trial at a great distance from the residence of the parties and witnesses, nor can it afford to await the sittings of a court held at long intervals. The civil causes thus found to belong naturally to the county court will fall into two classes:

(1) Those which involve sufficient sums to warrant trial at the county seat or at some other regular place for holding sessions of the county court.

(2) Those which involve less sums, or originate at points more remote from the county seat, and must be tried nearer to the homes of the parties.

The cost of removing a cause is the cost of moving the parties and all of their witnesses.

The first class of causes is easily provided for. The county court is presumed to be in session every day at the county seat, where there is a resident county court clerk. It should also be competent for the county judge to convene his court anywhere in the county and regular sittings should be scheduled in towns of sufficient importance.

It is in respect to economical and efficient trial of the lesser causes, arising in the villages and on the farms, that speculation begins. These causes are ordinarily within the jurisdiction of justices of the peace who are without training in the law, are dependent upon fees, and have a jurisdiction extremely narrow both as to territory and subject matter. The weakest feature of the system lies in the very slight administrative supervision to which justices of the peace are subjected.

In Canada the office of justice of the peace is almost wholly honorary. The J. P. has no civil jurisdiction and his activity in criminal matters is nearly obsolete. All minor civil causes are heard directly by the county judge who goes on circuit in his county and holds court at least once in sixty days in every township. The county judge is a very conspicuous official, appointed by the Dominion government, and directly in line for promotion to the provincial supreme court. The success of the system is evidenced by the fact that juries are seldom demanded in minor causes and appeals are very rare. The trial of neighborhood controversies under such a system is quiet and effective. It affords no scope to the tendency among our people to look upon

trials as an inexpensive form of theatricals.

The Canadian plan is the logical exemplification of their ideal of concentrated administrative power. A Crown judge carries into every township the dignity and power of the Provincial judicial establishment. It is a simple and effective plan and yet there are reasons for believing that it would not be the most successful plan for our people even if it were readily attainable.

A principal reason is our jealousy of power and our habit of looking upon the adjudication of minor controversies as a local function. Another objection lies in the inapplicability of the system to the enforcement of criminal law. In Ontario, for instance, the need for a judicial peace officer in every locality has developed a system of police magistrates whose work is largely supervised by the county judge.

It seems plausible to endeavor to fill the need for localized courts in the states by removing the disabilities that our justices of the peace labor under rather than by adopting outright the simple Canadian plan.

This can be done by abolishing the fee system, by giving the magistrate as much territory as he can properly handle, by providing a better form of selection and tenure, and by subjecting the office to the direct supervision of the county judge.[1] These changes are considerable, but unless the county judge is to visit every part of the county periodically, there must be a local magistracy, the members of which are nothing more nor less than an extension of the person of the county judge, accountable to him in the highest degree.

Rural population is not evenly distributed. Some single townships might afford sufficient business for a magistrate while in thinly populated sections several townships should be united to form a district. No district should be so large as to compel more than two or three hours' travel on the part of any of its residents who attend court. Bearing this need in mind it may be said that there should be as few districts in the county as can be.

According to this scheme the county will be divided arbitrarily

[1] The reader will please bear in mind that the words "supervision" and "control" as employed throughout this article are not intended to mean control of the essential juristic function. It is the author's opinion that all judges should be subject to supervision and control as to the administrative side of their respective offices but that they and the least of them should be absolutely free and independent from compulsion or influence in deciding the specific cause after formal submission.

into numbered districts of various sizes, shapes, and populations. To avoid confusion township boundaries should form the lines of the districts. Counties of average size will be likely to have from five to eight districts. In every district a local magistrate is needed who may be called the district magistrate. Few if any of the magistrates will be lawyers.

What will be the nature and extent of jurisdiction of the magistrates? What is desired virtually is to give to those magistrates who develop genuine ability a large place in adjudicating their neighbor's controversies, and to afford easy relief from the personal limitations of the less capable. It would be unfortunate to have a narrow jurisdiction fixed rigidly for there is fair presumption that the office would attract more intelligence and disinterestedness than the office of justice of the peace in traditional form. In most localities there is some worthy citizen, a natural leader, who could under an ideal tenure render a very high service through conciliatory methods and informal procedure, and he should be given large scope for developing his capacity as judge and peace maker.

A reasonable jurisdiction to confer on magistrates would seem to be as follows:

(1) All matters within the jurisdiction of justices of the peace, subject, however, to the power of the county judge to take over any cause for his personal hearing and determination. Application for such transfer can be made by either of the parties litigant, by the district magistrate, or the county judge can arbitrarily take any such cause without application.

(2) Any cause or matter within the jurisdiction of the county court assigned especially by the county judge to the district magistrate.

(3) Any cause within the jurisdiction of the county court which the parties agree shall be heard by the district magistrate.

It is believed that the foregoing provisions would center responsibility in the county judge and give him entire control of the magistracy. It would afford the elasticity which is needed in order to avail of extreme simplicity and informality as a regular thing and at the same time permit of avoiding this primitive simplicity in special cases by those who have reason to fear its consequences.

Informality flies out of the window when a jury enters. Where there are no juries there seldom are lawyers. Where there are no lawyers there is opportunity for conciliation. The bar has no occasion for jealousy in this matter because these little cases, tried away from the county seat, cannot afford fair remuneration. So it might be well to forbid the use of a jury by the district magistrate. This would make for jury waivers in most causes begun in a district presided over by a responsible, fair minded magistrate. The result would be the minimum of friction and expense. Where the jury was demanded the case would have to be heard by the county judge at a place to be determined by him. The county judge and magistrate between them would be able to put a timely curb on the disposition toward wanton extravagance which seizes the average litigant during the period between service and return day. If procedural reform is ever to be effectual it must be built upon the fundamentals of human nature.

We are prepared now to consider the ideal method of filling the offices. The county judge can be elected or appointed. There is no question that appointment by a conspicuous, responsible authority would result in a capable judiciary. But "responsible" should mean responsible for the due administration of justice, and this definition excludes governors. There would also be as many of these local judicial officers, and their aggregate power and influence would be so considerable, that it would not be wise to increase a governor's patronage to this extent.

The faults urged against election in the case of circuit judges do not apply equally to the office of county judge. The county is a wieldy district within short ballot principles. The people are well acquainted with the bar of their county. All around efficiency is most sought in this office and the electorate will pass on this indefinable quality with fair success. A lawyer cannot conceal his personality long. The voters will have a fair knowledge of the relative fitness of candidates. The office conforms to the second short ballot principle by being a conspicuous office, far more conspicuous in fact than any office now voted for in the average county. It would seem that we need only to consider what improvements, if any, can be made upon ordinary election methods.

As there can never be any large number of candidates a place on the nominating ticket should be made easy. A positive reason

for doing so lies in the need for making the eligibility test as broad as possible. No lawyer otherwise available for the position should be barred by reason of adherence to some theory of political economy alien to the judicial office. This implies a non-partisan ballot for the primary and the election. In states in which it is customary to hold judicial elections separately the plan should be adhered to in electing county judges. In other states a separate non-partisan judicial ballot should be employed.

Periodic elections and short terms have obvious faults. No matter how satisfactory the services of a judge may be he is required to run the gauntlet every four or six years. If he were merely required to submit to the electors the conduct of his office at periodic elections, so that they could exercise the option of declaring the office vacant, there would be sense in the system. But this is not the case. The people cannot pass upon the judge's record as a single unqualified issue. A motive for undermining his position and embarrassing him in the administration of his duties is furnished to all possible seekers after his office. The incumbent is then required to run against the field. This is one of the most forceful arguments against the judicial recall in its present form, and it applies almost equally to the ordinary form of election.

Let the people have a right to declare whether the incumbent shall continue in office. Let them also name his successor if there is to be a change. But our attempt to economize effort by obliging the voters to perform both of these functions through a single ballot merely results in confusion and injustice.

The elective principle will be at its best when the name of the incumbent is submitted to the voters with the simple question—shall he be continued in office? with spaces for checking the words "yes" or "no". The first term served by a judge should be considered a probationary period and so should be not longer than four years. If continued in office after this test the judge should not be required to run the gauntlet again for a period of eight years. A second confirmation should entitle him to another eight year term.

If a majority of the votes are in the negative the office should be declared vacant and the defeated judge should be ineligible to be a candidate for the office for the ensuing year. The vacancy can be filled through a special election or by an *ad interim* appointment. Appointment in such form would be free from the objec-

tions commonly ascribed to it for the appointing power would endeavor to anticipate the voters' wishes. A lawyer who had no reason to expect popular support would not be keen to accept appointment for a few months even if tendered him.

The foregoing plan would require the judge to "run against his own record", not against candidates actuated by selfish motives. It is reasonable to suppose that there would be a longer average tenure of office and greater freedom from political ties.

The situation is different with respect to the office of district magistrate. There are in every community men well qualified for public service who may accept a tendered office but who will not actively seek office. Election is not the ideal method of selecting magistrates. The irregular district is not adapted to the elective plan. Expert selection is needed and the office should seek the man.

The magistrates are but deputies of the county judge—extensions of his own person, in a manner—and he must control them thoroughly and be responsible absolutely for them. It would be proper then to permit the county judge to select the magistrates but this would lay the judge open to a vast deal of importuning which he should be spared if possible. A way out of the difficulty is to have the magistrates selected by the county board or commission with the approval of the county judge. Under this plan the county judge can at least prevent the selection of the unfit and can escape most of the solicitation of the office-hungry.

Control of the magistrates can be centered in the county judge by providing that the latter may remove them at any time for reasons assigned. This would prevent wholesale removals when there is a change in the office of county judge. The contingency is not so much to be feared because a new county judge would be loath to remove experienced magistrates and become dependent upon raw recruits. If the entire state judiciary is organized it is appropriate to provide that the chief justice of the state must endorse an order of removal.

Thus far we have considered the machinery of the county court with reference only to civil jurisdiction. It will be found admirably suited to the administration of criminal law. Criminal causes have a tendency to concentrate at the county seat because usually there is no lockup elsewhere in the county. District magistrates would have power to issue warrants and conduct preliminary examinations in the same manner as is now commonly

done by justices of the peace. They may also be permitted to hear and determine charges involving penalties not exceeding a certain amount, reserving the more important matters for the county judge. If, as previously suggested, the magistrate is not permitted to preside over a jury, there would be a strong motive for waiver of jury trial as a saving of time and money on the part of the accused. The right to have a jury is a grand thing. Its exercise in every trifling cause would entirely block the wheels of justice.

The county judge should be permitted by rule to take over for trial before himself every criminal matter triable by a magistrate. This would make for uniformity of law enforcement throughout the county and would enable the magistrate to transfer the responsibility in certain embarrassing prosecutions to more capable shoulders.

As to the limit of criminal jurisdiction reposed in the county court, it would probably be most expedient to retain the dividing line between felonies and misdemeanors, but to permit trial of all but the most serious felonies by the county judge with the consent of the accused. Nearly all those charged with serious offenses would then have the option of being tried by the county judge or of being held for trial at the next term of the court of general jurisdiction.

It might be found desirable to empanel a jury in county court regularly once a month. In a few days all jury trials would be disposed of. This would be a great improvement over the custom of utilizing locally the special venire which is wont to bring semi-professional jurors into most cases.

We have now a rough sketch of a county court which fixes responsibility on a conspicuous popular official and provides him with a corps of local assistants subject to his guidance. It is timely to consider the relationship of such a court to a thoroughly organized state court system.

It must be presumed that the system is made up of three general judicial departments, namely, the court of appeal, the nisi prius court, and the county courts. It must be presumed that the entire system will be governed by a council of judges possessing large powers for judicial administration and with respect to creating and amending rules of procedure; also that there will be a chief justice of the state who will be the executive head of the entire establishment.

There will be in the average state a small proportion of counties too populous to get along with a single county judge. There is experience warranting the belief that with a civil jurisdiction extending to $500 a county judge can serve a population of 40,000. In more populous counties up to 70,000 there should be an associate county judge, like the county judge in all respects save that he shall be subject to administrative control by the latter, and for every 30,000 population over 70,000 there should be an additional county judge. In most states there would be only a few such larger counties and they could be provided for individually.

A county judge who has an associate could assign supervision of the districts to his assistant, trying the more important causes himself at the county seat; or the two might specialize severally in civil and criminal matters. The division of work should not rest upon any general rule but wholly upon the discretion of the county judge.

With two associate judges further specialization is possible. One might have sole charge of the probate department, of juvenile offenders, and the domestic relations branch, thus affording smaller urban districts the same benefits which large cities may enjoy, and which cannot readily be secured under the existing organization, or lack of it.

Consider now the rare county of really large population. One having 325,000 people would have a county judge and ten associate judges (unless in actual experience this number should be found too large or too small). Specialization on such branches as police court, juvenile, domestic relations, civil jury, criminal jury, civil non-jury, attachment and replevin, outlying districts, and so forth, would naturally come about, and the county judge, as head of the entire court, would be an officer with power commensurate with the large responsibilities involved.

Whether this disposal of the large city problem would be best cannot be told without much experience. The alternative is to consider a division between nisi prius and limited jurisdiction unnecessary in any county in which there is enough business to keep several judges constantly occupied. The result of having only one class of judge in such a county permits of a more thorough organization of the judicial machinery than has been proposed for the typical county court.[2] The two plans will have

[2] For a study of the court organization specially adapted to the large city see the following publications of the American Judicature

to be tried out before their relative merits can be gauged. An objection to the employment of the county court plan in a large city arises from the fact that the district ceases to be wieldy as an election unit and the office ceases to be conspicuous where there are more than two or three associate judges to be elected.

A principal point of contact between the county court division and the rest of the state judicial establishment arises from the duty of the chief justice to collect and publish full statistics of all divisions and branches of the state court system. The district magistrates will be required to report their business to the county judge as frequently as once a month and the county judge will be required to report for the county not less often to the chief justice.

In most of the states it would probably be preferable to permit the chief justice to delegate his control over county courts to a judicial officer known as presiding justice of the county courts. If the administration of justice in the local courts is to be brought to a highly efficient plane the work of supervision merits the undivided attention of one properly qualified official. Given such a presiding justice it may be presumed that he will spend much of his time in the field, traveling from county to county, encouraging uniformity of practice, and checking or stimulating county judges according to their individual needs.

There are other points of contact. The jurisdiction of the county court civilly should be concurrent with the jurisdiction of the nisi prius branch. Abuse of the right to begin causes involving small amounts in the higher court is readily prevented by rules concerning costs, as is done in Canada. The plaintiff who does not recover more than $500 may be required not only to forfeit costs, but to pay costs, at the discretion of the court, to the defeated defendant. The flexibility thus secured will be appreciated by the litigant who believes, whether for cause or not, that the local judge is prejudiced.

A close union of the local and general courts may also be effected through making the county judge *ex officio* master for his county of the circuit court. This dignifies his position and makes the business of the higher court more continuous in the most remote parts of the state.

Society: Bulletins II and IV. Bulletin VI is the first draft of an act to establish a state-wide system of courts, including local courts. Copies may be had free on application to the author.

On the ministerial side there is also close relationship because the clerk of the county court will be the local deputy of the clerk of the entire state court. The actual compilation of statistics will be done by the clerks on behalf of the judges.

Here the game of make-believe must stop. The simple form and close co-ordination here suggested may never be worked out. But no very considerable change is needed to produce self-conscious courts from which a high order of attainment may naturally be projected. It is a problem of administration, of political science, rather than of law. No change in substantive law, no change in individual or collective rights, is proposed.

One who holds inflexibly to an ideal of government of laws and not of men must presume a co-ordinated system of courts to serve as the material medium for an expression of the law's ideal. One who thinks of the law as the popular will must presume a system at once responsible and responsive. At the present time our machinery of justice is not closely co-ordinated, nor is there conspicuous responsibility, nor any possible responsiveness to any definite ideal of justice or administration. This is especially true of the decentralized and disconnected local courts. No interest has anything to fear from improvement in the machinery of justice. On the contrary all interests can find in such a proposal a genuine advance toward the goal of government.

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